

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 6966	DATE	10/2/2002
CASE TITLE	David A. Dew, Sr. vs. Cook County Department of Corrections		

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[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:**DOCKET ENTRY:**

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] Enter Memorandum Order. Dew's application to proceed without prepayment of the fees is denied. (3-1) Both his Complaint and this action are dismissed.

- (11) [For further detail see order attached to the original minute order.]

No notices required, advised in open court.		number of notices	Document Number
No notices required.		OCT 03 2002	
Notices mailed by judge's staff.		date docketed	
Notified counsel by telephone.		docketing deputy initials	
Docketing to mail notices.		10/2/2002	
Mail AO 450 form.		date mailed notice	
Copy to judge/magistrate judge.		SN	
SN	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID A. DEW, SR.,)
Plaintiff,)
v.) NO. 02 C 6966
COOK COUNTY DEPARTMENT OF)
CORRECTIONS,)
Defendant.)

DOCKETED
OCT - 3 2002

MEMORANDUM ORDER

David Dew, Sr. ("Dew") has filed a brief self-prepared Complaint against the Cook County Department of Corrections ("Department"), accompanied by a filled-out In Forma Pauperis Application and Financial Affidavit ("Application"). Although Dew does not specify the basis on which he seeks to invoke federal jurisdiction, the Complaint (a photocopy of which is attached) makes it plain that he is attempting to assert a claim of violation of his constitutional rights (presumably under the Eighth Amendment¹) under 42 U.S.C. §1983 ("Section 1983").

For any plaintiff to gain in forma pauperis status, he or she not only must demonstrate his or her financial inability to pay the \$150 filing fee but must also state a non-frivolous claim in the sense defined in Neitzke v. Williams, 490 U.S. 319, 325

¹ As always, this opinion adheres to the conventional and convenient (though technically imprecise) practice of referring to the underlying Bill of Rights provision (which of course imposes limitations only on the federal government) rather than to the Fourteenth Amendment (which applies to state actors and has been construed to embody such Bill of Rights guaranties).

(1989) and refined in Denton v. Hernandez, 504 U.S. 25, 32-33 (1992). In this instance there is a bit of doubt as to whether Dew satisfies the first of those requirements (a showing of poverty), but that doubt will be resolved in his favor because he plainly falls at the second hurdle.

On that score, because Dew's stated grievance is simply one of having been subjected to the overcrowded conditions at Department's Cook County Jail for a bit under three weeks, during which he was the third man in a cell and required to sleep on the floor, he flunks the test of non-frivolousness in the legal sense spelled out in Neitzke. Although Dew's allegations are also accepted as true in factual terms, his claim is inarguable in the legal sense (the phrasing in Neitzke) when it is measured against Section 1983's requirements of a constitutional violation.

Accordingly Dew's Application is denied. Both his Complaint and this action are dismissed.



Milton I. Shadur
Senior United States District Judge

Date: October 2, 2002

JUDGE'S COPY

SEP 30 2002

MICHAEL W. DOBBINS, CLERK
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID A. DENSKY

Plaintiff(s)

02C 6966

Case No.

Cook County Dept. of Corrections

Defendant(s)

JUDGE SHADUR

MAGISTRATE JUDGE MASON

COMPLAINT

I WAS INCARCERATED AT COOK COUNTY DEPT. OF CORRECTIONS IN CHICAGO, ILL., FROM AUGUST 30, 2002 UNTIL RELEASED ON SEPTEMBER 18TH, 2002. I WAS IN DIVISION 5, 1K. MY NUMBER "20020069702". I WAS IN CELL "lower 10". I WAS ASSIGNED TO THAT CELL WITH TWO OTHER PRISONERS. THERE WERE ONLY 2 BEDS. I BEING THE 3RD MAN ASSIGNED HAD TO SLEEP ON THE "CONCRETE FLOOR" FOR THE FULL LENGTH OF TIME THAT I WAS THERE.

David A. Denksky

SEP 30 2002